

**LCI International®**  
**Worldwide Telecommunications**

ORIGINAL

DOCKET FILE NO. 97-208 ORIGINAL  
ORIGINAL  
RECEIVED  
OCT 20 1997  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

October 20, 1997

William F. Caton, Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, NW  
Washington, DC 20554

Re: CC Docket No. 97-208

Dear Mr. Caton:

Enclosed please find an original and six copies of LCI International Telecom Corp.'s Comments to CC Docket No. 97-208 and a diskette containing the same.

A copy of these Comments has been delivered to the International Transcription Service, Inc. Please place a copy of this letter in the public record of the above-referenced docket.

If you have any questions or require additional information, please phone Christi Shewman at (703) 610-4809.

Sincerely,



Douglas W. Kinkoph  
Director, Regulatory and Legislative Affairs

Enclosures

No. of Copies rec'd. 016  
ENCLOSURE

DOCKET FILE COPY ORIGINAL

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**RECEIVED**

OCT 20 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of:

Application of BellSouth Corporation,  
BellSouth Telecommunications, Inc.  
and BellSouth Long Distance, Inc. for  
Provision of In-Region, InterLATA  
Services in South Carolina

CC Docket No. 97-208

**COMMENTS OF LCI INTERNATIONAL TELECOM CORP.  
IN OPPOSITION TO BELL SOUTH'S SECTION 271  
APPLICATION FOR SOUTH CAROLINA**

Douglas Kinkoph  
Director, Regulatory Affairs  
LCI INTERNATIONAL TELECOM CORP.  
8180 Greensboro Drive, #800  
McLean, VA 22102

Rocky N. Unruh  
MORGENSTEIN & JUBELIRER  
One Market  
Spear Street Tower  
Thirty-Second Floor  
San Francisco, CA 94105

Eugene D. Cohen  
BAILEY CAMPBELL PLC  
649 North Second Avenue  
Phoenix AZ 85003

Counsel for  
LCI INTERNATIONAL TELECOM CORP.

## **SUMMARY OVERVIEW**

LCI International Telecom Corp. ("LCI") opposes BellSouth's application to provide in-region, interLATA services in South Carolina. Although LCI does not currently offer local exchange service in South Carolina, LCI is directly interested in BellSouth's application. LCI has a region-wide resale agreement with BellSouth. Pursuant to that agreement, LCI began reselling local service in Georgia in April of 1997, and has since expanded its resale operations into four other BellSouth states, Florida, Tennessee, North Carolina and Kentucky.

LCI plans to continue its expansion across the entire BellSouth region, including into South Carolina. As it has in the other BellSouth states, LCI intends to enter the market as a reseller in order to more quickly gain a market presence. Resale is not, however, LCI's principal competitive strategy for the BellSouth region; LCI's business plan calls for it to transition as quickly as possible to providing local exchange and exchange access service to both business and residential customers over its own network platform comprised of unbundled network elements ("UNEs") purchased from BellSouth. LCI's competitive strategy is one that is specifically authorized by the Telecommunications Act of 1996 ("Act"), and has been strongly supported by the Commission's regulations and orders.

LCI wants to be able to compete against BellSouth in each state in its region, but on fair and equal grounds. This cannot and will not happen if the Commission grants BellSouth's South Carolina application at this time. In just the few months that LCI has been attempting to incorporate its competitive strategy in BellSouth's region, LCI has encountered numerous roadblocks erected by BellSouth -- roadblocks that demonstrate that BellSouth has not yet irreversibly opened up its local exchange monopolies to competition from LCI and other competitive local exchange carriers ("CLECs"), nor complied fully with the obligations required of it under sections 251 and 271 of the Act.

The roadblocks that LCI has confronted elsewhere in BellSouth's region are directly relevant to this proceeding because BellSouth has established region-wide service centers for its wholesale operations, and has adopted the same processes, procedures and interfaces for access to its operations support systems ("OSS") for every state in its region.<sup>1</sup> Thus, the deficiencies that exist in these systems and interfaces -- and the discriminatory access that these deficiencies are causing to LCI and other CLECs -- are not confined by state boundaries, but extend across BellSouth's entire region, including into South Carolina.

As will be discussed in more detail in these comments, the Commission should deny BellSouth's application for South Carolina because, among other reasons:

- **BellSouth is not providing LCI and other CLECs with parity of access to the functions of its OSS as required under sections 251 and 271(c) of the Act.**

BellSouth's interfaces to its OSS do not provide CLECs with access that is at parity with BellSouth's own access. In the brief time that LCI has been using BellSouth's EDI interface for ordering and provisioning, LCI has encountered excessive delays in the receipt of firm order confirmations; excessive delays in the provisioning of orders; manual processing of orders that should flow-through electronically to BellSouth's OSS; orders that have been "lost" in BellSouth's system; and substantial delays in obtaining resolution of problems due to the lack of sufficient personnel who have been adequately trained in EDI applications. Moreover, BellSouth's interface for pre-ordering -- LENS -- is not integrated with BellSouth's EDI interface for ordering, which means that LCI must

---

<sup>1</sup> The Commission has previously acknowledged the relevance of intra-region evidence in its order rejecting Ameritech Michigan's section 271 application. See *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298 at ¶¶ 156, 238, 240. (rel. Aug. 19, 1997) ("Ameritech Order"). Like BellSouth, Ameritech has region-wide service centers and employs the same systems and interfaces across all of the states in its region.

duplicate entry of information each time it conducts pre-ordering and ordering functions for the same end-user customer.

- **BellSouth has not yet proved, and cannot prove on the record before this Commission, that the interfaces it has established to its OSS enable LCI (and other CLECs) to perform OSS functions in substantially the same time and manner that BellSouth can for itself, as required under the Act and orders of the Commission.**

BellSouth has not implemented performance measures that present comparative data of actual performance levels provided to CLECs versus those provided to BellSouth's own retail operation, which this Commission has previously stated are essential to determining parity.<sup>2</sup> BellSouth has also failed to disaggregate its performance data, thus preventing an accurate assessment of its OSS performance. And, BellSouth has not provided any type of auditing process to ensure that its performance measures are accurate.

- **BellSouth will not provide LCI (and other CLECs) with any meaningful access to UNEs at cost-based rates, in violation of sections 251(c)(3), 252(d)(1) and 271(c)(2)(B)(ii) of the Act.**

In response to an effort by LCI to test BellSouth's systems and procedures for providing access to UNEs in combination, BellSouth has advised LCI that (1) it will not combine UNEs for LCI; (2) it will not provide access to UNEs in combined form even when those UNEs are already combined in BellSouth's network; and (3) it will provide UNEs to LCI at cost-based rates *only* if LCI does not combine them to provide a local exchange service that duplicates a service offered by BellSouth, in which case BellSouth will charge resale rates to LCI. BellSouth's position not only violates the Act and this

---

<sup>2</sup> See, e.g. *Ameritech Order* at ¶ 166. ("We conclude, therefore, that in order to demonstrate nondiscriminatory access to OSS functions, [an incumbent LEC] must demonstrate that it is provisioning resale orders within the same average installation interval as that achieved by its retail operations.")

Commission's orders and regulations, it will, if not rejected, effectively foreclose one of these three modes of competitive entry envisioned by Congress in the Act: use of combined elements of the incumbent's network over which to provide end-to-end telecommunications services in competition with the incumbent.

In sum, BellSouth has not yet satisfied its section 271(c) obligations; it is discriminating against its potential competitors; and its local exchange service and exchange access monopolies in South Carolina (and elsewhere across its region) are not yet open to meaningful competition. To grant BellSouth's application at this time would eliminate any incentive that BellSouth might otherwise have to correct these deficiencies, which in turn will indefinitely delay the primary objective of the Act: competition in the local services market. BellSouth's application should, therefore, be denied.

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. BELLSOUTH IS NOT PROVIDING CLECs WITH PARITY OF ACCESS TO THE FUNCTIONS OF ITS OSS AS REQUIRED UNDER SECTIONS 251 AND 271(c) .....	1
II. BELLSOUTH CANNOT PROVE THAT IT IS PROVIDING PARITY OF ACCESS AND SERVICE TO CLECs AS REQUIRED BY SECTIONS 251 AND 271(c) BECAUSE IT LACKS ADEQUATE PERFORMANCE MEASURES .....	7
A. BellSouth's Failure to Reveal Actual Performance Levels. ....	8
B. BellSouth's Failure to Disaggregate Its Data.....	1
C. BellSouth's Failure to Provide an Auditing Process. ....	9
III. BELLSOUTH'S APPLICATION SHOULD BE DENIED BECAUSE IT IS NOT PROVIDING, NOR OFFERING TO PROVIDE, NONDISCRIMINATORY ACCESS TO NETWORK ELEMENTS AS REQUIRED BY THE ACT. ....	10
A. LCI's Has Requested To Test BellSouth's Systems And Procedures For Providing Combined UNEs. ....	11
B. BellSouth Has Refused To Provide The Combined UNEs Requested by LCI.. ....	12
C. BellSouth's Insistence On Separating Elements That Are Already Combined Is Anticompetitive .....	14
IV. CONCLUSION .....	15

**I. BELLSOUTH IS NOT PROVIDING CLECs WITH PARITY OF ACCESS TO THE FUNCTIONS OF ITS OSS AS REQUIRED UNDER SECTIONS 251 AND 271(c)**

To comply with its obligations under sections 251 and 271(c), BellSouth must prove, among other things, that it is providing CLECs with interconnection and access to its network elements and resale services on a nondiscriminatory basis. See 42 U.S.C. §§ 271(c)(2)(B)(i-iii, vii, ix, x, xii and xiv); 251(c)(3); 251(c)(4); 251(b)(3). In order for BellSouth to provide CLECs with such nondiscriminatory interconnection and access, CLECs must be provided with equal access to the functions of BellSouth's OSS.

The Commission recognized the importance of parity to access to the incumbent ILEC's OSS, first in its Local Competition Order,<sup>3</sup> and more recently in its Ameritech Order. In the Ameritech Order, the Commission explained that:

. . . in order to meet the nondiscriminatory standard for OSS, an incumbent LEC must provide to competing carriers access to OSS functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing that is equivalent to what it provides itself, its customers or other carriers. Additionally, . . . incumbent LECs must generally provide network elements, including OSS functions, on terms and conditions that "provide an efficient carrier with a meaningful opportunity to compete."

Ameritech Order at ¶ 130. In order for an incumbent LEC to demonstrate that it is providing the checklist items required by the Act, it must prove "that it is providing nondiscriminatory access to the systems, information, and personnel that support those elements or services." *Id.* at ¶ 132. Without equivalent access to an incumbent LEC's OSS, "many items required by the checklist, such as resale services, unbundled loops, unbundled local switching, and unbundled local transport, would not be practically available." *Id.* In even more compelling terms, the Commission has stated that (1) "it is

---

<sup>3</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Red. at ¶¶ 518, 521 (rel. August 8, 1996).



absolutely necessary for competitive carriers to have access to operations support system functions in order to successfully enter the local service market"; (2) if CLECs do not have access to an ILEC's OSS functions "in substantially the same time and manner that an incumbent can for itself, [they] will be severely disadvantaged, if not precluded altogether, from fairly competing"; and (3) "nondiscriminatory access to these support system functions, which would include access to the information systems contained is vital to creating opportunities for meaningful competition." Local Competition Order at ¶¶ 521, 518.

LCI's experiences to date with two of BellSouth's interfaces -- LENS for pre-ordering and EDI for ordering and provisioning -- demonstrate that CLECs do not have parity of access to BellSouth's OSS.

To begin with, LENS and EDI are not integrated interfaces. Thus, the information that LCI enters into and obtains from LENS when conducting pre-ordering activities (e.g., address validation), cannot be electronically imported into the EDI application for purposes of placing the order. See Declaration of Betty Baffer ("Baffer" Decl.) at ¶ 5. This means that LCI has to rekey that information, and other information, such as the customer's name and telephone number, in order to place even the simplest of orders. *Id.* LCI does not believe that BellSouth must use two, non-integrated systems to access its OSS for pre-ordering and ordering.

LCI has also experienced numerous problems to date with BellSouth's EDI interface, during both the training and testing process that BellSouth established to certify LCI for use of that interface, and also during LCI's use of that interface for live production orders. These problems have included:

**Inadequate Training:** BellSouth does not provide CLECs with adequate training on its EDI interface. At the BellSouth training session attended by LCI representatives, the BellSouth trainer had never submitted an actual order across the EDI interface, nor

were LCI representatives able to do so during the training. See Declaration of Albert D. Witbrodt (Witbrodt Decl.) at ¶ 4. The computers BellSouth provided for the training were stand-alone systems; they were not even connected to BellSouth's OSS. *Id.* Thus, the only training LCI received was on how to fill out a basic electronic order form, which in EDI parlance is known as an "850." The training session did not address other key EDI documents, including order acknowledgments (997s), order confirmations (855s), and completion notices (865s), nor did it address how to handle such occurrences as order corrections and order cancellations while an order was pending in BellSouth's systems. *Id.*

**Problems With Certification Testing:** BellSouth's training was followed by a certification process during which LCI submitted test orders. LCI experienced problems during this process as well. For example, although LCI followed the test data published in BellSouth's implementation guides, some orders were rejected by BellSouth. *Id.* at ¶ 5 and Exhibit A. There were also test orders submitted for which no order acknowledgments were received back from BellSouth, even though such acknowledgments are required by EDI standards. *Id.*<sup>4</sup>

The problems that plagued LCI during the certification process have become even worse during its use of the EDI interface for live orders. LCI has, for example, faced excessive delays in the receipt of firm order confirmations ("FOCs") from BellSouth; excessive delays in the provisioning of LCI's orders; and orders that have been "lost" in BellSouth's system. See Declaration of Beth Rausch ("Rausch Decl.") at ¶ 4.

---

<sup>4</sup> BellSouth's EDI is also non-compliant with industry standards with respect to order cancellations. The industry standards for EDI require that an order change acknowledgment, an 865, be sent by BellSouth following receipt of a cancellation of a pending order. BellSouth's EDI does not issue such acknowledgments, and a CLEC would not, therefore, know whether the order cancellation has been processed by BellSouth. Witbrodt Decl. at ¶ 7. LCI has advised BellSouth of this deficiency, but it has not yet been resolved. *Id.* at ¶ 7 and Exhibit B.

**FOC Delays:** In an EDI environment, the purchase order form is known as an "850." After LCI submits an 850 to BellSouth, BellSouth's EDI application should respond to that order first with an order acknowledgment (a "997"), and second, assuming the order is not rejected, with a FOC (an "855"). The FOC is particularly important because it indicates that BellSouth's OSS has accepted the order, and it provides a due date for when that order will be provisioned. *Id.* at ¶ 5.

BellSouth committed to LCI that it should receive FOCs within 24 hours after submission of an order. *Id.* at ¶ 6. To date, BellSouth has met that interval on only 10% of LCI's orders. *Id.* at ¶ 7. Indeed, the average interval to date between submission of an order and receipt from BellSouth of a FOC is 7 days. *Id.* This, clearly, is not at parity with the access that BellSouth provides for its own retail operations, and it is unacceptable performance for what is supposed to be electronic access to BellSouth's OSS.

**Provisioning Delays:** The FOC delays mean that LCI's orders are delayed in provisioning. It often takes several days after receipt of the FOC before BellSouth provisions LCI's orders. *Id.* at ¶ 8. And these are not complex orders; most are simple conversion orders for POTS. *Id.*

**Lost Orders:** LCI has also had some "850" purchase orders that have been effectively lost in BellSouth's system. *Id.* at ¶ 10. Although these orders were initially acknowledged by BellSouth's system, LCI did not receive any FOCs for these orders. *Id.* LCI representatives had numerous telephone calls with BellSouth in an attempt to locate these orders. BellSouth initially denied having received the orders, even though the system had previously acknowledged their receipt. *Id.* After a three week delay, BellSouth finally located the orders.

**Manual Processing:** The delays in FOCs and order completions strongly suggests that LCI's electronic orders are falling out for manual processing at BellSouth's

end, rather than flowing through electronically into BellSouth's OSS. BellSouth has informed LCI that when LCI orders need "clarification," they get "dropped out" of the system and are handled manually by a BellSouth representative. *Id.* at ¶ 9. There also appears to be disagreement among BellSouth representatives as to which orders require manual processing. Some representatives have told LCI that orders with six lines or more must be handled manually, while others maintain that any order with more than *one* line requires manual processing. *Id.* LCI has requested written clarification of the circumstances under which orders fall out for manual processing; BellSouth has yet to respond. *Id.*

In rejecting Ameritech's application, the Commission found that manual processing can result in the practical unavailability of services or elements, impeding the development of local competition. Ameritech Order at ¶ 180. Moreover, the time-consuming manual intervention that is required on BellSouth's end, when magnified by the quantity of orders that can be expected when multiple CLECs are in full-scale, commercial operation, will most assuredly result in slower and more error-ridden processing of CLEC orders, thereby giving BellSouth an unreasonable competitive advantage. As the Commission has recognized:

[A]n incumbent that provisions network resources electronically does not discharge its obligations under § 251(c)(3) by offering competing providers access that involves manual intervention. . . .

Local Competition Order at ¶ 523. BellSouth's use of manual processing for orders that should flow through to its system electronically deprive CLECs of equal access to BellSouth's OSS.<sup>5</sup>

---

<sup>5</sup> See Ameritech Order at ¶ 196 ("Because it is virtually impossible for orders that are processed manually to be completed in the same time as orders that flow through electronically, it is difficult to see how equivalent access could exist when [an incumbent LEC] processes a significant number of orders from competitive carriers manually.")

**Lack Of Adequately Trained Support Personnel:** To date, BellSouth has not provided LCI with access to personnel who are adequately trained in the EDI interface and who can timely respond to problems and issues that arise. Witbrodt Decl at ¶ 6; Rausch Decl. at ¶11. BellSouth has not provided LCI with a single point of contact to whom it can address problems and issues that have arisen with respect to the EDI application. *Id.* Consequently, LCI representatives frequently have to make numerous telephone calls to several different BellSouth representatives in an attempt to resolve problems and get questions answered. *Id.* This is an extremely burdensome and inefficient process, and it frequently takes several days to get questions answered and problems resolved, if they get resolved at all. *Id.*

Clearly, BellSouth has not "deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions," nor is it "adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them." Ameritech Order at ¶136. Indeed, given all of the problems that LCI has experienced to date with BellSouth's EDI interface, there have been periods of time in which LCI has abandoned use of the EDI interface and reverted to manual processes -- handwritten orders sent via facsimile -- to avoid the excessive time devoted to problem resolution. However, LCI cannot compete on equal footing with BellSouth using manual processes for ordering and provisioning. As one would expect with manual process -- and as LCI's experiences have shown -- this is a more error-prone process, and there are significant delays in getting the orders processed and provisioned. Baffer Decl. at ¶¶ 4 and 6.

In sum, BellSouth is not providing LCI with parity of access to its OSS. The fact that BellSouth purports to have an electronic interface over which orders can be submitted does not, by itself, establish that BellSouth is providing nondiscriminatory

access as required by the Act.<sup>6</sup> BellSouth must provide an EDI interface that complies with industry standards and which allows orders to flow through electronically, without manual intervention; it must provide CLECs with adequate training on its interface; and it must provide personnel who are knowledgeable about the interface and who can timely respond to issues and problems as they arise. BellSouth has not done any of this to date. BellSouth is *not* providing CLECs with access "that is equal to the level of access that [it] provides to itself, its customers or its affiliates, in terms of quality, accuracy and timeliness." Ameritech Order at ¶139. BellSouth's application should, therefore, be denied.

**II. BELLSOUTH CANNOT PROVE THAT IT IS PROVIDING  
PARITY OF ACCESS AND SERVICE TO CLECs AS  
REQUIRED BY SECTIONS 251 AND 271(c) BECAUSE IT  
LACKS ADEQUATE PERFORMANCE MEASURES**

The Commission made clear in its Local Competition Order that an ILEC "must provide access to [OSS] functions under the same terms and conditions that they provide services to themselves" and that competing carriers must be provided with the ability "to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair and billing for network elements and resale services in substantially the same time and manner that an incumbent can for itself". Local Competition Order at ¶¶ 315, 518. The Commission reiterated these prerequisites in its Ameritech Order when it stressed that: "the ultimate burden of proof with respect to factual issues remains at all times with the BOC, even if no party opposes the BOC's application," including the burden of demonstrating parity of OSS access. Ameritech Order at ¶¶ 43, 128 132-42, 158. And, to meet its burden of demonstrating nondiscriminatory OSS access, it is crucially

---

<sup>6</sup> See *also* Ameritech Order at ¶ 196 ("Because it is virtually impossible for orders that processed manually to be completed in the same time as orders that flow through electronically, it is difficult to see how equivalent access could exist when [an incumbent LEC] processes a significant number of orders from Competitive carriers manually.")

important that the incumbent disclose its OSS performance standards and related historical data and measurements, to allow this Commission (as well as the CLECs and the state commissions) to determine if the incumbent is in fact providing the parity of OSS access mandated by Congress and the Commission. Ameritech Order at ¶¶ 157-203 (explaining in detail Ameritech's failures to provide sufficient data). That is, unless one knows the performance levels at which BellSouth provides the various OSS functions to LCI and others is at a level at least equal to what BellSouth provides itself. DOJ Ameritech Evaluation at 38-39. Hence, the Commission has explained:

Clear and precise performance measurements are critical to ensuring that competing carriers are receiving the quality of access to which they are entitled.

\* \* \*

The Commission must be satisfied that the performance measurements . . . actually measure performance in a manner that shows whether the access provided to OSS functions is nondiscriminatory. Otherwise, discriminatory conduct may be masked or go undiscovered. Therefore, we must find that both the quantity and quality of the evidence is sufficient in order to make a determination of whether [an incumbent LEC] is in compliance with its duty to provide nondiscriminatory access to OSS functions, as required by section 271.

Ameritech Order at ¶¶ 209, 211.

Unfortunately, notwithstanding the clear mandate of this Commission, the performance measures presented by BellSouth in this proceeding are lacking in several fundamental respects. As a result, it is impossible to determine whether BellSouth is providing parity of OSS access and, therefore, BellSouth necessarily has failed to meet its burden of demonstrating that it, in fact, is providing such access. In summary form, here are some of the more blatant shortcomings of BellSouth's submission.

**A. BellSouth's Failure to Reveal Actual Performance Levels.**

For the most part, BellSouth's performance measures report percentages that are within the upper and lower parameters selected by BellSouth. This approach does not

present comparative data of actual performance levels for CLECs compared to what BellSouth provides for itself. Thus, in the main, BellSouth's stated measures actually conceal, rather than disclose, the actual level of performance for the groups being compared. For example, BellSouth could be obtaining for itself performance levels close to, even better than, the upper limit, while CLECs could be within BellSouth's designated "range," but still below what BellSouth is achieving. Compounding this shortcoming, through its unilateral choice of upper and lower parameters, BellSouth can conceal unacceptable performance, whereas on the other hand, a direct comparison of BellSouth's performance for CLECs with its own performance would be a far more accurate measurement.

**B. BellSouth's Failure to Disaggregate Its Data.**

Various individual performance measurements must be presented separately to assess accurately whether or not BellSouth is providing parity of service. Yet, BellSouth has not established performance measures addressing transaction cycle time, interface availability, transaction accuracy, and system capacity for all its operational interfaces. Nor has BellSouth disaggregated its data to show separate performance for: (1) whether or not manual intervention is involved; (ii) differing mixes of services between CLECs and BellSouth; (iii) differences in the types of activities conducted by CLECs as opposed to BellSouth; and (iv) differences in the products offered.

**C. BellSouth's Failure to Provide an Auditing Process.**

It is critical to an evaluation of parity that the Commission (and CLECs) have a procedure by which they can audit BellSouth performance measures and results. Otherwise, there is no way to ensure that BellSouth's reported: (i) measures are based on properly designated data collection processes; (ii) results are computed based on defined and agreed-upon methodologies; and (iii) results can be corroborated



independently. And yet, BellSouth has not provided the Commission or the CLECs with any type of auditing process.

In sum, BellSouth has not provided the "clear and precise performance measurements" that the Commission has stated are required to prove that BellSouth is in compliance with its section 271 duty to provide nondiscriminatory access to its OSS functions. BellSouth's application should, therefore, be denied.

**III. BELLSOUTH'S APPLICATION SHOULD BE DENIED  
BECAUSE IT IS NOT PROVIDING, NOR OFFERING TO  
PROVIDE, NONDISCRIMINATORY ACCESS TO  
NETWORK ELEMENTS AS REQUIRED BY THE ACT.**

The second item on the checklist, and one of BellSouth's most important obligations under the Act, is the provision of "nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)."

Section 251(c)(3) imposes upon BellSouth:

*The duty to provide to any requesting telecommunication carrier for the provision of a telecommunication service nondiscriminatory access to network elements on an unbundled bases at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. . . . An incumbent local exchange carrier shall provide such unbundled elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunication service.*

(Emphasis supplied.)

The Commission has repeatedly recognized that it is vital to competition for CLECs to have access to UNEs and combinations of UNEs at cost-based rates. In its order rejecting Ameritech's application, the Commission stated that "the ability of new entrants to use unbundled network elements, as well as combinations of unbundled network elements, is integral to achieving Congress' objective of promoting competition in the local telecommunications market." Ameritech Order at ¶ 132. The Commission has also determined that "limitations to access to combinations of unbundled network

elements would seriously inhibit the ability of potential competitors to enter local telecommunications markets through the use of unbundled elements, and would therefore significantly impede the development of local exchange competition." *Id.* at ¶ 333. And, in its order on access charge reform, the Commission premised its decision to adopt a "market-based approach to reducing interstate access charges" substantially on its expectation that new competitors would be able "to lease an incumbent LEC's unbundled network elements at cost."<sup>7</sup>

It is apparent from BellSouth's SGAT, and LCI's recent efforts to attempt to test a combination of UNEs in BellSouth's region, that BellSouth intends to rely upon the Eighth Circuit Court of Appeal's recent decision in *Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997) to effectively deprive CLECs of an ability to compete with BellSouth using a combination of UNEs obtained from BellSouth at cost-based rates. Although LCI strongly disagrees with the Eighth Circuit's decision, and does not believe it will withstand further appellate proceedings, BellSouth's offering for combined UNEs, even in view of that decision, does not comply with the Act, for the reasons discussed below.

**A. LCI's Has Requested To Test BellSouth's Systems And Procedures For Providing Combined UNEs.**

Although LCI has entered the BellSouth region as a reseller of local services, resale is not LCI's principal, long-term competitive strategy. See Declaration of Kay D. Speerstra ("Speerstra Decl."), at ¶ 2. Lacking its own local network facilities and the resources necessary to build those facilities in each of the markets in which LCI wishes to compete, LCI's business plan calls for it to use a combination of UNEs obtained from the incumbent LECs over which to offer local exchange and exchange access services. *Id.* at ¶ 3.

---

<sup>7</sup> *Access Charge Reform, et al.*, CC Docket No. 96-262, First Report and Order, ¶¶ 32, 44 (FCC 97-158, rel. May 16, 1997).

As a first step in implementing that competitive strategy, LCI submitted a proposal to BellSouth on July 9, 1997 to begin testing the systems and procedures that BellSouth had in place to provide access to combined UNEs. *Id.* at ¶ 4 and Exhibit A. LCI's proposal was designed to test and verify, first on a very limited basis, BellSouth's manual and electronic procedures for ordering and provisioning a combination of UNEs consisting of local loops and local switching, and shared transport over BellSouth's interoffice network using the existing routing instructions in the switch for the transport and termination of local calls. *Id.* at ¶ 5 and Exhibit A. The test also called for exchange of billing records to determine if BellSouth could provide all of the detail necessary to enable LCI to (a) bill its end-users who received service over the unbundled network elements, (b) bill BellSouth for reciprocal compensation for calls originated by BellSouth customers and terminated to an LCI customer whose service was provided over the unbundled elements, and (c) bill interexchange carriers for originating and terminating access charges for long distance calls originated by or terminated to LCI's customer. *Id.* at ¶ 6. This last aspect of the test is particularly important because the Commission has recently affirmed a CLEC's right to use unbundled network elements to provide exchange access services, and to collect the originating and terminating access charges associated with those services.<sup>8</sup>

**B. BellSouth Has Refused To Provide The Combined UNEs Requested by LCI.**

BellSouth has rejected LCI's proposal to test a combination of UNEs. In a September 10 letter to LCI, BellSouth stated that pursuant to the Eighth Circuit's decision, it was not required to provide combined UNEs to CLECs. Speerstra Decl. at ¶ 9 and Exhibit C. While BellSouth purported to offer individual UNEs "in a manner that

---

<sup>8</sup> See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Order on Reconsideration, FCC 97-2195 at ¶ 52 (rel. August 18, 1997).

allows CLECs to combine them," it did not identify the procedures that should be followed by CLECs to accomplish that combination.

BellSouth's position in its September 10 letter to LCI is consistent with its SGAT offering in this proceeding. With respect to UNE combinations, its SGAT states as follows:

F. CLEC-Combined Network Elements

1. CLEC Combination of Network Elements. CLECs may combine BellSouth network elements in any manner to provide telecommunications services. BellSouth will physically delivered unbundled network elements where reasonably possible, e.g., unbundled loops to CLEC collocation spaces, as part of the network element offering at no additional charge. Additional services desired by CLECs to assist in their combining or operating BellSouth unbundled network elements are available as negotiated,"

This offer is defective on its face. Even assuming that BellSouth should be allowed to separate elements that are already combined in its own network -- to which LCI strongly objects -- BellSouth must offer established processes and procedures by which CLECs can be assured that they can order individual UNEs and undertake the necessary combination of these elements. This is a specific obligation imposed on BellSouth by section 251(c)(3): BellSouth "*shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunication services.*"

BellSouth's SGAT does not identify in any detail how it intends to permit CLECs to order and then combine all of the individual UNEs that will be necessary to permit CLECs to provide competitive local exchange and exchange access services. In short, all we have is BellSouth's "paper promise" that it will comply with the Act; there is nothing that demonstrates that BellSouth is capable of making UNEs available to CLECs as required by section 251(c)(3), nor is there any assurance that BellSouth will honor its "paper

promise" once it has been authorized to offer long distance service in South Carolina and elsewhere in its region.

Moreover, BellSouth is also attempting to unreasonably restrict the type of telecommunications services that LCI and other CLECs can offer over combined UNEs obtained from BellSouth. In an October 7, 1997 letter to LCI, BellSouth has stated that while LCI can purchase individual UNEs from BellSouth and then combine them to offer a telecommunication service, if that telecommunication service duplicates one already offered by BellSouth, BellSouth will charge LCI resale rates, not the cost-based rates mandated by the Act. Speerstra Decl. at ¶ 12 and Exhibit E. There is no basis under the Act for BellSouth to impose this restriction. The Act requires BellSouth to provide UNEs to CLECs at cost-based rates so that those UNEs can be combined and used by CLECs to offer telecommunications services. See §§ 251(b)(3) and 252(d)(1). The Act does not state that CLECs can only use the UNEs they obtain to provide services not offered by the incumbent. BellSouth's attempt to limit the types of services that LCI can offer using UNEs acquired at cost-based rates is, therefore, in violation of the Act.

**C. BellSouth's Insistence On Separating Elements That Are Already Combined Is Anticompetitive.**

The UNEs that LCI plans to use in BellSouth's region -- loops, local switching and shared transport facilities -- are already combined in BellSouth's network. There is no rational business justification for BellSouth to separate these combined elements before making them available to CLECs, other than to substantially increase the CLEC's costs in using UNEs to provide local exchange and exchange access services in competition to BellSouth. By attempting to separate elements that are already combined in its network, BellSouth is imposing terms and conditions upon LCI's use of UNEs that are unjust and unreasonable, in violation of section 251(b)(3). It is also the type of anticompetitive conduct by a monopolist that is condemned by our antitrust laws. See, e.g., *Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, 472 U.S. 585 (1985) (Supreme Court affirmed

section 2 monopolization claim where defendant had refused to participate on reasonable terms in joint marketing program with its smaller rival, without any valid business justification for the refusal).

In sum, BellSouth's SGAT on UNEs does not comply with the Act, and is designed to foreclose competition altogether from CLECs such as LCI who desire to offer telecommunications service over unbundled network elements obtained from BellSouth at cost-based rates.

#### IV. CONCLUSION

BellSouth has not met its obligations under sections 251 and 2371(c) of the Act, no matter whether its application is judged under Track A or Track B. Required steps to open up its monopoly on local exchange service in South Carolina to competition and has instead taken affirmative steps to erect barriers to such competition. For the reasons set forth above and in the declarations accompanying these comments, LCI respectfully requests that BellSouth's application be denied.

Dated: October 20, 1997


LCI INTERNATIONAL TELECOM CORP.

By:

  
Douglas Kinkoph

MORGENSTEIN & JUBELIRER

By

  
Rocky N. Unruh

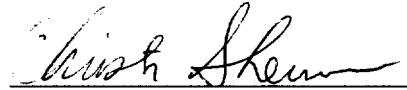
BAILEY CAMPBELL PLC

By

  
Eugene D. Cohen

## CERTIFICATE OF SERVICE

I, Christi Shewman, do hereby certify that copies of the foregoing Comments of LCI International Telecom Corp. in Opposition to the BellSouth Application for Provision of In-region, Interlata Services in South Carolina, CC Docket No. 97-208 were served this 20<sup>th</sup> day of October, 1997 to the following by hand delivery or overnight delivery.

  
Christi Shewman

Reed E. Hundt, Chairman  
Federal Communications Commission  
1919 M Street, NW, Room 814  
Washington, DC 20554

Rachelle B. Chong  
Commissioner  
Federal Communications Commission  
1919 M Street, NW, Room 844  
Washington, DC 20554

Susan Ness  
Commissioner  
Federal Communications Commission  
1919 M Street, NW, Room 832  
Washington, DC 20554

James H. Quello  
Commissioner  
Federal Communications Commission  
1919 M Street, NW, Room 802  
Washington, DC 20554

Janice Myles (5)  
Policy and Program Planning Division  
Common Carrier Bureau  
Federal Communications Commission  
Room 544  
1919 M Street, NW  
Washington, DC 20554

Donald J. Russell  
Department of Justice  
Telecommunications Task Force  
Antitrust Division  
Room 8205  
555 Fourth Street, NW  
Washington, DC 20001

South Carolina Public Service Commission  
111 Doctors Circle  
Columbia SC 29203

ITS, Inc.  
1231 20<sup>th</sup> Street, NW  
Washington, DC 20036

A. Richard Metzger, Jr.  
Acting Chief  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, NW, Room 500  
Washington, DC 20554

William Kennard  
General Counsel  
Federal Communications Commission  
1919 M Street, NW, Room 600  
Washington, DC 20554

Jake Jennings  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, NW, Room 544  
Washington, DC 20554

Richard Welch  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, NW, Room 544  
Washington, DC 20554

John Nakahata  
Competition Division  
Federal Communications Commission  
1919 M Street, NW, Room 654  
Washington, DC 20554



Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

**RECEIVED**

OCT 20 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of:

Application of BellSouth Corporation,  
BellSouth Telecommunications, Inc. and  
BellSouth Long Distance, Inc. for Provision  
of In-Region, InterLATA Services in South  
Carolina

CC Docket No. 97-208

**SOURCE MATERIALS SUPPORTING  
COMMENTS OF LCI INTERNATIONAL TELECOM CORP.  
IN OPPOSITION TO BELL SOUTH'S SECTION 271  
APPLICATION FOR SOUTH CAROLINA**

Douglas Kinkoph  
Director, Regulatory Affairs  
LCI INTERNATIONAL TELECOM CORP.  
8180 Greensboro Drive, #800  
McLean, VA 22102

Rocky N. Unruh  
MORGENSTEIN & JUBELIRER  
One Market  
Spear Street Tower  
Thirty-Second Floor  
San Francisco, CA 94105

Eugene D. Cohen  
BAILEY CAMPBELL PLC  
649 North Second Avenue  
Phoenix AZ 85003

Counsel for  
LCI INTERNATIONAL TELECOM CORP.